



# TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road  
Tewksbury, MA 01876

Robert Dugan, Chairman  
Len Dunn, Vice Chair  
Gerald Kutcher  
**Associate Members:**  
Jaime Doherty  
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

## MEETING MINUTES September 24, 2015

The meeting was called to order by Rob Dugan, Chairman, at 6:30 p.m. at the Pike House (temporary town hall). Present at the meeting were Len Dunn, Gerald Kutcher, Diane Bartalamia, and Melissa Johnson, Recording Secretary.

Jaime Doherty was not in attendance

### Approval of Meeting Minutes – August 27, 2015

**MOTION:** Mr. Dunn made the motion to approve the August 27, 2015 meeting minutes; seconded by Mr. Kutcher and the motion carried 4-0.

### CONTINUED NEW HEARINGS

**Attorney Jared Eigerman for BGM 358 Shawsheen LLC** for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structures and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **358 Shawsheen Street**, Assessor's Map 70, Lot 59, zoned Residential.

Present was Attorney Jared Eigerman and Michael Martin, owner of the property. Attorney Eigerman explained that the existing home is a single family that was constructed in 1920 and is in very poor condition. Such poor shape that the Town's public health director has been trying to get it cleaned up for years. A formal violation was issued in 2012 due to the condition of the property and they are now addressing this in Housing Court. Attorney Eigerman noted that the previous owner would not, or could not, fix the property; however, the Petitioner purchased the property in June, 2015 and have the funds to fix the building.

Attorney Eigerman explained that their request for a building permit was refused on July 9, 2015 due to the lot size and provided the members with a copy of the Building Commissioner's denial letter. Attorney Eigerman read the letter aloud and noted that this was a surprise to them as the lot size has not changed in 50 years; which is half the time the home has been on the lot. As a

result, they filed a petition for zoning relief and notified the abutters according to State Law. In addition, the current property managers have spoken with the neighbors.

Attorney Eigerman explained that they are present to request relief on two grounds; which the Building Commissioner was not specific on which, even though they feel they only need one. Attorney Eigerman explained that in July they argued to concede that they are worsening an existing nonconformity and not making it substantially more detrimental. The second ground they are requesting relief on, is to add a variance to go back in time to the 1960s when a variance should have been obtained for the lot size. Attorney Eigerman noted that the home was constructed in 1920 and they did find a plan that shows the same footprint from 1932. It is a mystery how the property came to be .38 acres. Attorney Eigerman noted that there is a plan from 1961 that shows there was much more than 1 acre with the same frontage. Attorney Eigerman noted that the Building Commissioner did not cite for frontage. The next plan is from 1973 regarding the neighbors adding land and shows this lot at its current small configuration. As a result, they have determined that the nonconformity occurred some time between 1942 and 54 years ago. There is no evidence that any of the previous owners have been cited for inadequate lot size and building permits have been issued over the years. Attorney Eigerman noted that this property has been on the Town's radar due to the sanitation issues.

Attorney Eigerman explained that the petitioners purchased the property approximately three months and paid approximately \$170,000. They are essentially "dead in the water" dealing with the property; which is in Court, but until they can obtain a building permit to raze or fix the property there is nothing to be done. If do not obtain the zoning permit, there is nothing that could be done with the property as it is in a residential area.

Attorney Eigerman discussed Sections 3630, 3651 and 9221 of the Zoning Bylaws and explained that the Board can grant a special permit even if it increases the nonconformity; so long as it is not more detrimental to the neighborhood. Attorney Eigerman noted that the structure will remain a single family and they are proposing 2,168 square feet of living space. Attorney Eigerman noted that the Board can also require the new building be the same footprint as the existing. Mr. Dunn requested drawings of what is being proposed and Attorney Eigerman provided this. The existing building is also closer to the front property line than what is allowed.

Ms. Bartalamia asked how long the building has been vacant and it was noted approximately 3-4 years. Ms. Bartalamia asked if a building permit was applied for in 2013 and Mr. Martin noted that the bank had applied for the permit to fix the property as the roof was leaking. The building permit was granted at that time with no issues.

Attorney Eigerman explained that should it be determined that a variance is required, they feel that they are consistent with Section 3640 of the Zoning Bylaw based on a variance should have been obtained between 1961-1973 to be below the one acre requirement. Attorney Eigerman explained that there are three findings under current law: peculiarity, a literal enforcement would involve substantial hardship, and that relief can be granted without substantial detriment to the public good. Attorney Eigerman noted that the key point is until 1975, the finding on peculiarity did not rely on soil conditions, shape, or topography. Attorney noted that this is an unusual situation.

Mr. Dugan noted that it is his understanding that the Building Commissioner is stating that it is not a nonconforming lot, because it is not considered to be a lot and there should not be a structure on it. Attorney Eigerman confirmed this to be his understanding and noted that the Building Commissioner cited Section 3630 and he had originally requested Section 3651 and later withdrew this as the Building Commissioner had only cited Section 3630. Mr. Dugan read Section 3630 aloud.

Attorney Eigerman explained that they cannot find any evidence of how the right was obtained to reduce the lot to .38 acres after 1961. Mr. Dugan asked if they are seeking a variance for when the lot was split to make it a nonconforming lot and Attorney Eigerman confirmed this and noted that the only problem with the project is the lot configuration.

Attorney Eigerman explained that if this were a vacant lot the entire time and sometime between 1961 and 1973 and the lot size was reduced, they would be in trouble. The difference here is the home was constructed in 1920. Mr. Dunn questioned whether the Board could even issue a variance for something that happened that long ago.

Mr. Dunn asked who is housing court, the current owners or the prior owner, Lori Balesteri, and Attorney Eigerman explained that it was originally against Lori Balesteri; however, when they purchased the property in June, they accepted service as the lawsuit runs with the land.

Ms. Bartalamia asked what was done with the land that was subdivided and Attorney Eigerman explained that in 1973 the land was given to the neighbors to make their lots larger.

Attorney Eigerman noted that the new building would be pulled back to 32 feet; currently is less than approximately 20 feet. Mr. Dunn asked if the garage is staying and Mr. Martin confirmed this and explained that they will be fixing it, but would be willing to raze it should the Board desire.

Attorney Eigerman discussed Latches and Ms. Bartalamia noted that Latches would not apply as they have only owned the property for three months. Ms. Bartalamia noted that the Board does not have the deed to the previous owner, Lori Balesteri. Attorney Eigerman noted that he can provide this and asked what the Board would be looking for with this deed. Ms. Bartalamia explained to see if it gives any indication as to where the land went and why.

Discussion took place on which Section of the Zoning Bylaw applies, which Section relief would be granted from, and which Section the Building Commissioner feels is appropriate.

Ms. Bartalamia explained that this is not really a matter of a hardship as the owners knew the lot size was inadequate. Attorney Eigerman noted that they were not aware when they purchased the property and if they were, they would not have purchased it. Mr. Martin noted that they were told verbally that they could build on the lot by someone at the building department. Attorney Eigerman noted that they did not become aware of the issue until they applied for the building permit and it was denied.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Mr. Dunn made the motion to approve Attorney Jared Eigerman for BGM 358 Shawsheen LLC for a Variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for frontage and lot size, to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at 358 Shawsheen Street, Assessor's Map 70, Lot 59, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

**MOTION:** Mr. Dunn made the motion to approve Attorney Jared Eigerman for BGM 358 Shawsheen LLC for a Special Permit under Section 3630 of the Tewksbury Zoning Bylaw to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at 358 Shawsheen Street, Assessor's Map 70, Lot 59, zoned Residential; seconded by Mr. and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

#### **New Business**

There was no new business.

#### **Old Business**

There was no old business.

#### **Adjourn.**

**MOTION:** Ms. Bartalamia made the motion to adjourn; seconded by Mr. Kutcher and the motion carried 4-0.

*Approved: 11/19/15*

*List of documents for 9/24/15 Agenda  
Documents can be located at the Community Development Office*

Approval of Minutes – August 27, 2015

#### **CONTINUED HEARING**

**6:30 P.M.** Attorney Jared Eigerman for BGM 358 Shawsheen LCC for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structures and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **358 Shawsheen Street**, Assessor's Map 70, Lot 59, zoned Residential.

- Letter dated 9/21/15 fr Dalton & Finegold